IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8808 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUJI KALUJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHRI BHATT for MR MH BAREJIA for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. The petitioner by filing this writ petition under Article 226 of the Constitution of India, challenged theorder of detention dated 28.2.2000 (Annexure-A) passed by the respondent no. 2 in exercise of his powers conferred upon him under sec. 3(2) of the Gujarat

Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioner detenu is a bootlegger within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. To arrive at a subjective satisfaction, before passing the order of detention, the detaining authority has placed reliance on six prohibition case lodged in Sabarmati Police Station, out of which, three cases are pending in the court awaiting trial and three cases are pending with the Investigating Officer for further investigation. The detaining authority has also placed reliance oln the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers of grounds of detention, the statement of first witness was recorded on 1.2.2000, while statement of second witness was recorded on 25.2.2000. The detaining authority verified that two statements on 28.2.2000 and on that very day i.e.on 28.2.2000, the detaining authority has passed an order of detention which is under challenge in this writ petition.

3. Though rule has been served upon each of the respondents, the respondents have not filed affidavit-in-replies, in reply to main petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenge of the order of detention which is the subject matter of this writ petition.

4. Learned advocate Ms. Jayshri Bhatt for the petitioner has argued that the detaining authority has placed reliance on two statements of witnesses and that statements were verified on 28.2.2000 and on the same day, he passed the order of detention. She has further argued that looking to the dates of statements, date of verification and date of passing an order of detention, it clearly appears that the detaining authority has not applied his mind in arriving at his subjective satisfaction. She has placed reliance on the decision of Kalidas Chandubhai Kahar vs. State of Gujarat and Ors. reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. It has been further held that at the time of exercising the privilege under Sec. 9(2) of the Act, balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of

the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not. Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot berify the aforesaid facts and if the names and addresses alongwith the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and to make an effective representation on that basis. In this case, the detaining authority has not disclosed the identity of two witnesses. Looking to short period in between verifiction and passing of order of detention, he had no time to verify the statements and, therefore, impugned order challenged in this writ petition is bad in law and same is required to be quashed and set aside.

5. In view of discussion hereinabove, this writ petition is allowed. The impugned order of detention dated 28.2.2000 passed by respondent no. 2 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not required in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H.MEHTA, J.)
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